966.

SUPREME COURT OF THE UNITED STATES.

No. 99.

EDWARD CURTIS, (U. S.) PLAINTIFF IN ERROR,

vs.

WILLIAM MARTIN AND CHARLES A. COE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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J. & G. S. GIDEON, Printers.

UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States of America, to the judges of the circuit court of the United States for the southern district of New York, in the second circuit, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between William Martin and Charles A. Coe, plaintiffs, and Edward Curtis, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

J. W. METCALF,
Clerk of the Circuit of the United States for the southern district of New York, in the second circuit.

The answer of the honorable Smith Thompson and Samuel R. Betts, judges of the circuit court of the United States for the southern district of New York, in the second circuit, to the within writ, containing the citation, record, and proceedings in the within mentioned cause.

Attest: J. W. METCALF.

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit—To William Martin and Charles A. Coe:

Whereas Edward Curtis lately issued out of the Supreme Court of the United States, at the city of Washington, in the District of Columbia, a writ of error directed to the judges of the circuit court of the United States for the southern district of New York,

in the second circuit, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judges thereof, between William Martin and Charles A. Coe, plaintiffs, and Edward Curtis, defendant, a manifest error hath happened, to the great damage of the said defendant. And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held at Washington, in the District of Columbia, at the city of Washington, on the second Monday of January next:

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh.

SAM'L R. BETTS.

Due service admitted. DAN'L LORD, *jr., Att'y.*

UNITED STATES OF AMERICA, *southern district of New York, ss:*

I, James W. Metcalf, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, second circuit, this [L. S.] day of January, in the year of our Lord one thousand eight hundred and forty-three and of the independence of the said United States the sixty-seventh.

J. W. METCALF, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
for the southern district of New York, in the second circuit:

Pleas before the judges of the circuit court of the United States for the southern district of New York in the second circuit, at the City hall of the city of New York, of the first Monday of April, in the year of our Lord one thousand eight hundred and forty-two.

Witness Roger B. Taney, esq., chief justice of the Supreme Court of the United States of America.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the fourteenth day of March, in the year eighteen hundred and forty-two, before the judges of the circuit court of the United States for the southern district of New

York, in the second circuit, at the City hall, in the city of New York, comes Edward Curtis, by Ogden Hoffman, his attorney, and suggests to the said judges that William Martin and Charles A. Coe have commenced a suit against him in the superior court of the city of New York, in the State of New York, for acts done by him under the revenue laws as Collector of the district of the city of New York, and prays that the said suit may be docketed in this court as commenced here, and that the clerk be ordered to issue the proper process to remove the said suit and all the proceedings therein into this court. Whereupon the said judges sent unto the justice of the said superior court their writ, *close* in these words:

The President of the United States to the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, should be certified of a certain cause commenced before you, against Edward Curtis, defendant, at the suit of William Martin and Charles A. Coe, plaintiffs, do therefore command [L. S.] you that the record and proceedings in the said cause you distinctly and openly serve to the said circuit court of the United States for the southern district of New York, in the second circuit, at the city of New York, on the nineteenth day of March next, as fully and amply as the same are remaining before you, by whatsoever names the said parties may be called therein, together with this writ, that our court may cause to be further done thereupon what of right ought to be done.

Witness Roger B. Taney, esq., chief justice of the United States, at the city of New York, the fourteenth day of March, one thousand eight hundred and forty-two.

FRED. J. BETTS, *Clerk.*
OGDEN HOFFMAN, *Attorney.*

To which the following return was made:

The answer of the justices of the superior court of the city of New York to the within writ, the record and proceedings whereof mention is within made, and all things touching the same, are hereby respectfully certified to the justices of the circuit court of the United States for the southern district of New York within mentioned, as within it is commanded.

Witness Samuel Jones, esquire, chief justice of the superior court of the city of New York, at the City hall of the [L. S.] city of New York, the day of April, 1842.

C. A. CLINTON, *Clerk.*

New York Superior Court, of February term, in the year of our Lord one thousand eight hundred and forty-two:

CITY AND COUNTY OF NEW YORK, *ss:*

William Martin and Charles A. Coe, plaintiffs in this suit, by George B. Butler, their attorney, came into this court and filed with

the clerk thereof, at his office in the City hall in the city of New York, their declaration, according to the statute in such case made and provided, against Edward Curtis, defendant, a resident of the city and county of New York, and complain in a plea of trespass on the case upon premises.

For that, whereas the said defendant, on the first day of February, in the year of our Lord one thousand eight hundred and forty-two, at the city of New York, in the county of New York, indebted to the said plaintiffs the sum of eight thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiffs in the further sum of eight thousand dollars, like lawful money as aforesaid, for so much money before that time paid, laid out, and expended by the said plaintiffs to and for the use of the said defendant, and at the like special instance and request of the said defendant; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, indebted to the said plaintiffs in the further sum of eight thousand dollars, like lawful money as aforesaid, for money before that time had and received by the said defendant, to and for the use of the said plaintiffs; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid; and, upon such accounting, the said defendant then

and there was found to be in arrear, and indebted to the said plaintiffs in the further sum of eight thousand dollars, like lawful money as aforesaid; and, being so found in arrear and indebted to the said plaintiffs, the said defendant in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested) hath not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof, to the said plaintiffs, the said defendant hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiffs of eight thousand dollars, and thereof the said plaintiffs bring suit, &c.

And the said Edward Curtis, defendant in this suit, by Ogden Hoffman, his attorney, comes and defends the wrong and injury, when, &c., and says, that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant; and of this he puts himself upon the country, and the said plaintiffs likewise, &c.

Therefore, to try the issue above joined, let the marshal thereupon summon a jury to come before the judges of the circuit court of the United States of America, for the southern district of New York, in the second circuit, at the City hall of the city of New York, on the last Monday of November, in the year of our Lord one thousand eight hundred and forty-two, twelve of whom, &c., each of whom, &c., neither of whom, &c., by whom, &c., to recognise, &c., because as well, &c. The same day is given to the parties aforesaid at the same place.

And now at this day, that is to say, on the last Monday of November, of November term, in the year of our Lord one thousand eight hundred and forty-two, at the city of New York, in the county of New York, come as well the said plaintiffs by their attorney aforesaid, as the said defendant by his attorney aforesaid; and the jurors of the jury, summoned to try the said issue, being called, also come, who, to speak the truth of the matters above contained, being chosen, tried, and sworn, say, upon their oath, that the said defendant did undertake and promise, in manner and form as the said plaintiffs have above thereof complained against him, and they assess the damages of the said plaintiffs, by reason of the premises, over and above their costs and charges by them about their suit in this behalf expended, to four thousand five hundred and forty-three dollars and seventeen cents, and for those costs and charges to six cents.

Therefore, it is considered, that the said William Martin and Charles A. Coe do recover against the said Edward Curtis their

said damages, costs, and charges by the jurors aforesaid, in form aforesaid assessed, and also one hundred and seventy-eight dollars sixty-six cents, for their costs and charges of increase, by the said court was here adjudged to the said plaintiffs, and with their assent; which said damages, costs, and charges, in the whole, amount to four thousand seven hundred and twenty-one dollars and eighty-nine cents.

And the said defendant in mercy, &c.

Judgment signed this seventh day of January, one thousand eight hundred and forty-three.

J. W. METCALF, *Clerk.*

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	6
178	66
4,721	89

CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York:

EDWARD CURTIS,
ads.
WILLIAM MARTIN and CHARLES A. COE.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that afterwards, in the term of November, to wit, on the ninth day of December, in the year eighteen hundred and forty-two, before the honorable Smith Thompson, one of the judges of the circuit court of the United States, for the southern district of New York, at the City hall of the city of New York, the aforesaid issue, so joined between the parties, came on to be tried before a jury of the said southern district of New York, for that purpose duly empannelled, good and lawful men of the said district.

To maintain and prove the issue on their part, the counsel for the plaintiffs called John W. Earl, who testified that he was a clerk in the employ of the plaintiffs, and knows of certain importations of gunny cloth, made by them from Dundee, in Scotland, from April, eighteen hundred forty-one, to September. The said gunny cloths were imported in seventeen different vessels, seven of which were from Dundee, and ten from Liverpool.

The entries and invoices of the said goods were then produced in evidence, by which it appeared that the said gunny cloths were all purchased in Dundee, in Scotland. It was also proved, that the amount of duties paid by the said plaintiffs to the defendant, and claimed by him, as collector of the port of New York, for duties, was four thousand five hundred dollars; that this amount of duties was claimed as the duty on cotton bagging, and then it was paid under a written protest annexed to each entry, in and by which the

said plaintiffs gave notice that they should contest the right of the collector to receive such duties.

The witness further stated, that the cloth so imported was made from the yute grass, the material from which gunny bags are made; has known cotton bagging since 1836; was not acquainted with it in 1832.

On his cross examination, the witness stated that this cloth is applied to the use of cotton bagging; has been sold to southern merchants for bagging. If asked by a dealer if I had cotton bagging, and I had this cloth, I should say I had gunny cloth, and not cotton bagging, or I might say I had cotton bagging, and explain myself to refer to this cloth. The article is advertised by the name of gunny cloth; have heard it spoken of as India bagging.

The counsel for the plaintiffs, further to maintain the issue on his part, then called John Dean, who testified that he had known cotton bagging for nearly thirty years. In 1832, witness was in the employment of Boorman, Johnston, & Co., in their store in New York. They dealt very largely in cotton bagging, by importations and sales to the South. In 1832 the article in question was not used or known as cotton bagging; it was only seen in the form of bags for India goods. There was a scarcity of cotton bagging in 1834, when a Mr. Watt bought up all the gunny bags, ripped them apart, and sewed them together, which made a width of from 46 to 50 inches—cotton bagging was 42 inches in width. This was used as a substitute for cotton bagging, and afterwards gunny cloth was made of the usual width of cotton bagging—42 inches—and imported here for cotton bagging. That was the introduction of this article, and I think it was in 1834. Boorman, Johnston, & Co., were the largest importers of cotton bagging. Witness left them in 1836 or 1837, having been with them twenty years in the cotton bagging trade. The first importations of gunny cloth were after 1832; of this I have no doubt. I never heard gunny cloth called cotton bagging; it was generally called gunny bagging, or gunny cloth.

On his cross examination, the witness stated, that if an order for cotton bagging had been sent him, he should not have sent gunny cloth. If I had nothing but gunny cloth, and were asked for cotton bagging, should answer a buyer that I had not cotton bagging, but an article answering as well. I did so recently, without a knowledge of this suit. The old gunny cloth came from the East Indies, in the form of gunny bags; since then it came in its present form. It now comes from the East Indies and Scotland. Before the time of Mr. Watts, it did not come in its present width; does not know that before 1832 it was used in Scotland. Gunny bags, as an article of commerce, had been imported from India prior to 1832, but not in its present shape.

The counsel for the plaintiffs, further to maintain the issue on his part, called James Dee, who testified that he had been conversant

with the trade in cotton bagging since 1832, having been in partnership with a very extensive trader. The first time that gunny cloth came to this country for cotton bagging, to his knowledge, was three years ago. Does not import the article; receives orders from the South. On its first appearance, the article was called gunny cloth, gunny bagging, and East India bagging. Gunny or East India is generally used in connexion with bagging, when applied to this article.

On his cross examination, witness stated that there are many kinds of cotton bagging; burlaps have been used for it—cotton has been used for it. There is cotton bagging from Kentucky and from Scotland. If cotton bagging were ordered simply, witness should forward the Scotch cotton bagging. If he had nothing in his store but gunny cloth, and were asked for cotton bagging, he should reply, that he had gunny cloth, or gunny bagging. Witness considered that gunny cloth was the best article for cotton bagging. Gunny cloth is not known as cotton bagging in the interior, and some planters will not use it; it will not, it is said, resist the wet, nor dry so well. The fabric is very loose, and it is hard to sew. Gunny cloth is imported for no purpose but bagging cotton. It was admitted by the counsel for the plaintiffs that the article in question came from Dundee.

The counsel for the plaintiffs, further to maintain the issue on their part, called Eben B. Crocker, who testified that he had known the gunny cloth since 1833; first saw it in Calcutta, in pieces thirty yards long, thirty inches wide, and it bore the name of gunny cloth; it was not called cotton bagging. I first knew it here in 1835. It bore the name of gunny cloth, and is known by no other name as I have heard of. I deal in it. All kinds of articles from Calcutta are covered with gunny; first knew it used as cotton bagging in eighteen hundred and thirty-five.

On his cross examination, the witness stated that he knew nothing of cotton bagging in eighteen hundred and thirty-two; that he has imported gunny cloth, and that the money paid for duties, at Boston, has, since the decision of Judge Story, been returned.

The counsel for the defendant, to prove and maintain the issue on his part, called Richard B. Brown, who testified that he had been a merchant extensively engaged in business for twenty years; is now an appraiser in the custom-house; has examined the plaintiffs' importations in question; should call them cotton bagging; never saw an article made of gunny of the width of those goods prior to 1832. The article came then in the shape of gunny bags, which held about three bushels, in width about thirty inches. The article in question is 40 inches in width for the round bags, and 42 for the square bags; should assuredly call this article in question cotton bagging. It is quoted in the New Orleans Price Current—"India cotton bagging;" has no knowledge of this article in Dundee prior to 1832. In commercial language, it is now known as cotton bagging.

On his cross examination, the witness stated that he first knew it as cotton bagging within four years. I called it cotton bagging; the dealers have generally protested against it. The importations in question came from Dundee; it was the great place for manufacturing cotton bagging before 1832, and has been since that time.

The counsel for the defendant then called Abraham B. Mead, who testified that he was formerly an appraiser in the custom-house; had never known gunny cloth in its present shape prior to 1832. Since that time it has been imported in its present width, for the purpose of packing cotton. If asked the question, whether he had cotton bagging, when he had only this article, should answer that he had the India bagging. In commercial language, it is now called cotton bagging.

On his cross examination, to a question whether, prior to 1832, he should answer an order for cotton bagging with gunny cloth of its present width, the witness answered, that he should not, because it was not at that time known in its present shape; now, he should, upon such an order, furnish this article.

The defendants' counsel then called Ben. Graham, who testified that he was a dealer in cotton bagging. He sold the India, the Kentucky, and the Dundee bagging; they are all used for bagging cotton. If asked, when he had only gunny cloth, whether he had cotton bagging, should answer that he had cotton bagging. If he had all the different kinds of cloth used for bagging cotton, viz: the Kentucky, the Dundee, and the India bagging, should show one as soon as the other. The Dundee bagging is from 42 to 44 inches in width. Gunny cloth is from 43 to 46 inches in width; it was first known in its present shape in 1835. It is now known among merchants as cotton bagging.

On his cross examination, the witness answered, to the question whether he could now, under the present tariff, (of 1842,) which was read to him, enter this article as cotton bagging, that he had never had occasion to make any entries; he should be guided by the law; he should enter it now as gunny cloth, not as cotton bagging; might enter it as gunny cloth, although he expected to sell it for cotton bagging; should call the article cotton bagging; planters call it India bagging; by them the word cotton is dropped; in Alabama have heard it called India cotton bagging. Whether I answered an order for cotton bagging with this article of gunny cloth, might depend upon the place from which the order came.

If the customer had bought this article before, should send him this. This article is now known among merchants by the name of cotton bagging.

The defendant's counsel then called George Collins, who testified that he had dealt in cotton bagging. It is bought for the southern people; has bought this gunny cloth under a general order from the southern traders to get cotton bagging; in the bills of purchase

it was all called gunny cloth; the importers always call it gunny cloth; I never knew the article till about three years ago.

The counsel for the defendants then called Marvin McNulty, who testified that he was in mercantile business; never knew the article in question in 1832; it has been imported for five years expressly for cotton bagging; it is of the same width as the cotton bagging from hemp; it is similar in general appearance to cotton bagging. If he were asked whether he had cotton bagging, when he had only gunny cloth, should answer in the affirmative. It is now known by the name of cotton bagging.

On his cross examination, the witness stated that he had not imported the article since 1840; gunny bagging is generally double in the thread, which other bagging is not.

The counsel for the defendant then recalled Richard B. Brown, who testified that twenty years ago he had known cotton bagging made of cotton and of *tow*.

The counsel for the plaintiffs then called Robert Johnson, who testified that in 1832 cotton bagging was made of hemp and flax, or of a mixture of both. Gunny cloth was not, to his knowledge, known at that time. The greater quantity of the cloth comes from India. Gunny cloth is the term generally used for it. In gunny cloth the warp is double and the weft single; in the material made of hemp or tow, the weft and warp are both single.

On his cross examination, the witness stated that he understood from the purchasers that the article in question was used for cotton bagging; some call it cotton bagging, some gunny cloth. If he had only gunny cloth in his store, and was asked by a customer if he had cotton bagging, should answer yes. It is now known among merchants as cotton bagging.

The counsel for the defendant then contended that if the jury found that the article gunny cloth was, in commercial understanding, known as cotton bagging at the time of its importation, it was subject to a duty; and that the term cotton bagging, according to the commercial understanding of the phrase, signified any fabric, without regard to the materials of which it is composed, that was used to bale or cover cotton, and prayed the court so to charge the jury.

His honor the judge refused so to charge the jury; but on the contrary thereof, charged that the point upon which this case turns is for the decision of the jury, viz: whether the article in question in this case was known as cotton bagging in the year 1832, when the tariff act was passed. It has long been a settled rule of construction of revenue laws imposing duties on articles of a specified denomination, to construe the article according to the designation of such article, as understood and known in commerce, and not with reference to the material of which they may be made, or the use to which they might be applied. Nor ought such laws to be construed as embracing all articles which might subsequently be